IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/03/2004

CORAM

THE HON'BLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.18 of 1998 and CRL.APPEAL No. 350 of 1998

Criminal Appeal No.18 of 1998:

Suresh ... Appellant
Accused No.2

-Vs-

State by
Inspector of Police,
Coonoor Town Police Station,
Coonoor, Nilgiris District. ... Respondent.

Criminal Appeal No.350 of 1998:

1. Vijai ... Appellants /
2. Manickam Accused 3 & 4

Vs.

State by
Inspector of Police,
Coonoor Town Police Station,
Coonoor, Nilgiris District. ... Respondent.

These Criminal Appeals arise out of the judgment dated
01.10.1997 made in S.C.No.10 of 1997 on the file of Assistant Sessions Judge,
Udagamandalam.

!For appellants : Mr. B.Kumarasamy, in both
appeals.

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side) (in both appeals)

:COMMON JUDGMENT

Criminal Appeal No.18 of 1998: Second Accused in S.C.No.10 of 1997 on the file of Assistant Sessions Judge, Udhagamandalam is the Appellant in this appeal.

2. Criminal Appeal No. 350 of 1998: Accused Nos.3 and 4 in S.C.No.10 of 1997 on the file of Assistant Sessions Judge, Udhagamandalam are the Appellants in this appeal.

3. By the Judgment dated 01.10.1997 in S.C.No.10 of 1997, the Appellants and first Accused Chelladurai were convicted by the Trial Court for various offences and sentenced to undergo Rigorous Imprisonment.

4. Both the appeals arise out of common Judgment; common points for determination are involved in both the appeals. Hence, both the appeals were heard together and disposed of by this common Judgment.

5. Case of the prosecution could briefly be stated thus:-
P.W.1 - Ponvel is the Assistant Manager in Glendale Estate, Runnymade Division, Coonoor at the time of occurrence. His wife - P.W.6 (Sujatha Ponvel) and children went to Madras. On the night of 13.04.1996, P. W.1 was alone in the Estate Bungalow. P.W.7 (Ganesan) - Watchman was outside the Bungalow.

6. Occurrence. On 13/14.04.1996 - 1.30 a.m., five persons came to the Bungalow and three of them (A.2, A.3 and A.4) were armed with ' Kattai'. A.1 and Deceased Accused Perumal was armed with Aruval. Having gained entry into the Bungalow, they beat P.W.7 - Watchman and tied his hands asking for his 'Mudalali'. P.W.7 called "Jiu. Jiu". Upon hearing the noise, P.W.1 - Ponvel put on the switches, opened the door and came out. P.Ws.1 and 7 were taken inside the Reception Room by the Accused and confined there. Deceased Accused Perumal cut P. W.1 with Aruval. While resisting the attack, P.W.1 - Ponvel sustained injuries on his left index finger. A.2 and A.3 beat P.W.1 with ' Kattai' on his head and shoulder. By pleading not to do anything, P.W.1 handed over Bureau Key. When he tried to escape, A.4 - Manickam, who was keeping watch on the Bath Room side, beat P.W.1 with 'Kattai'. The Accused searched the Bungalow and robbed the jewels and money. They also took P.W.7 - Watchman to search for jewels. Accused had also taken the cash of Rs.9,000/-, V.C.R., Tape-recorder, etc. After robbing the articles, the Accused escaped in a Maruti Van bearing Registration No.TN 41 A 8668 kept in the Bungalow.

7. Complaint and Registration of the Case. Injured P.W.1 Ponvel took his motor cycle and went to Coonoor Police Station. On the early morning - 2.00 a.m. on 14.04.1996, P.W.1 lodged Ex.P.1 - Complaint before P.W.16 - Head Constable. On the basis of Ex.P.1 - Complaint, P.W.16 registered a case in Crime No.240 of 1996 under Sec.394 I.P.C. under Ex.P.27 - First Information Report. Injured P.Ws.1 and 7 were sent to Coonoor Government Hospital for treatment.

8. Investigation. P.W.20 - Inspector of Police had taken up the investigation. He inspected the Runnymade Division Estate in the presence

of P.W.9 - Murugan and one Prabhakaran. Ex.P.16 - Observation Mahazar and Ex.P.34 - Rough Plan were prepared on the scene of occurrence. M.O.39 series - Photographs were taken by P.W.13 (Thangaraj) - Photographer.

9. Interception of Maruti Van and arrest of the Accused.
On the night of 13.04.1996, P.W.17 - Sub Inspector of Police and his party, Karamadai were on regular patrolling duty in the National Highways. On 14.04.1996 - 3.30 a.m., they received information from Coimbatore Control Room about the Maruti Van, which sped away with robbed articles and the dacoities. Upon receipt of such information, P.W.17 - S.I. of Police thoroughly checked the vehicles.

10. At about 4.00 a.m., they spotted M.O.1 - Maruti Van which did not stop for signal by the Police party. P.W.17 and his party chased the Maruti Van to some distance. In North Kovai over Bridge, the Maruti Van hit against the Bridge and stopped. Deceased Accused Perumal jumped from the Bridge. A.4 - Manickam had run away. At about 4.3 0 a.m., A.1 to A.3 were arrested. From the Maruti Van, stolen articles, jewels and cash and also weapons - M.Os.1, 8 to 29 and 41 were seized under Ex.P.28 - Seizure Mahazar. P.W.17 submitted his Special Report Ex.P.29 to P.W.18 - Inspector of Police, Traffic Wing, Coimbatore.

11. Case in Crime No.307 of 1996. On the basis of Ex.P.29 - Special Report, P.W.18 - Inspector of Police, Traffic Wing, Coimbatore registered a case in Crime No.307 of 1996 under Ss.279, 337 and 338 I.P. C. r/w 119 and 117 of Motor Vehicles Act and under Sec.174 Crl.P.C. Ex.P.30 is the First Information Report in Crime No.307 of 1996. The arrested Accused were found with injuries. Hence, they were sent to Coimbatore Medical College

Hospital, where they were treated for their injuries. Exs.P.14 and P.15 are the Accident Registers of A.2 and A.3. Ex.P.7 is the Wound Certificate of first Accused Chelladurai. A.4 - Manickam was arrested on 09.06.1996.

12. Identification Parade. Pursuant to requisition from Inspector of Police, P.W.2 - Judicial Magistrate held the Identification Parade in Coimbatore Central Prison on 10.06.1996 for identification of A.2 and A.3 by P.W.1 - Ponvel. In the Identification Parade, P.W.1 has correctly identified A.2 and A.3. A.4 - Manickam was arrested on 09.06.1996. After his arrest, on 03.07.1996, regarding A.4 another Identification Parade was held in Coimbatore Sub Jail. P.Ws.1 and 7 have correctly identified A.4. At that time, P.W.7 had also identified A.2 and A.3. Since A.1 - Chelladurai was injured, no Identification Parade was held regarding him.

13. Death of Accused Perumal. Case in Crime No.307 of 1996 was registered under Ss.279, 337 and 338 I.P.C. R/w 119 and 177 of Motor Vehicles Act and under Sec.174 Crl.P.C. On 17.04.1996, First Information Report was sent to the higher officials and to the Court. Escaped Accused Perumal was found by P.W.17 with severe bleeding injuries. He was taken to Coimbatore Medical College Hospital where he was declared dead. Thereafter, P.W.18 - Inspector of Police, Traffic Wing had sent request to Revenue

Divisional Officer to conduct inquest on the body of Perumal. Inquest was held on the body of deceased Accused Perumal. After inquest, P.W.5 - Dr.Shanmughavelusamy had conducted Post-mortem on the body of deceased Accused Perumal. Noting eleven external injuries, P.W.5 issued Ex.P.11 - Post-mortem Certificate.

14. Seized Material Objects were sent for chemical analysis. The chance print lifted from the scene of occurrence tallied with the finger print of deceased Accused Perumal. Upon completion of investigation, charge sheet was filed against the Accused under Ss.45 0, 323, 39 5 and 397 I.P.C. R/w 395 I.P.C.

15. To substantiate the charges against the Accused, in the trial Court, prosecution has examined P.Ws.1 to 20. Exs.P.1 to P.41 were marked. M.Os.1 to 41 were produced. Accused were questioned under Sec.313 Crl.P.C. about the incriminating evidence and circumstance. The Accused had denied all of them stating that a false case is foisted against them. According to the Accused, A.2 and A.3 were taken from under the Railway Bridge and implicated in the false case. According to A.4, he was taken from Aarthi Hotel in Triplicane, Madras and a false case is foisted against him.

16. Upon consideration of the evidence, the learned Assistant Judge found that the involvement of the Accused is well proved by the evidence of P.Ws.1 and 7, whose evidence is strengthened by the earlier identification of the Accused in the Identification Parade. For recording the finding of guilt, the trial Court mainly placed reliance upon the (i) evidence of P.Ws.1 and 7 and that they were injured; (ii) recovery of material objects along with Maruti Van - M.O.1; (iii) identification of the Accused by P.Ws.1 and 7 in the earlier Identification Parade.

17. On the basis of the above findings, the trial Court found the Accused guilty under various offences and convicted them as noted below:-

Charge (1)	Gist of charge (2)	Against which Accused (3)	Finding (4)	Sentence. (5)
1 Under Sec.450 IPC	House Trespass to commit the offence punishable with imprisonment for life.	A1 to A.4	Found guilty under Sec.450 IPC.	A.1 to A.4 sentenced to undergo Rigorous Imprisonment for five years each.

2
Under Sec.323 IPC-
Causing simple injury to P.W.7 - Ganesan.
A.1,
to
A.3
A.1 found not guilty under sec.323 IPC.

A.2 and A.3 found guilty under Sec.323 IPC.

A.2 and A.3 Sentenced to undergo Rigorous Imprisonment for one year each.
3
Under Sec.326 IPC For causing grievous injury to P.W.1 - Ponvel with deadly weapon
A.1 to A.3

A.1 found guilty.

A.2 and A.3 found not guilty.
A.1 sentenced to undergo Rigorous Imprisonment for five years.
4
Under Sec.395 IPC
Committing dacoity of jewels and cash and Maruti Van.
A. 1
to
A.4
A.1 to A.4 found guilty.
A.1 to A.4 sentenced to undergo Rigorous Imprisonment for seven years each.
1)
(2)
(3)
(4)
(5)
5
Under Sec.397 r/w 395 -
Causing grievous injury to P.W.1 - Ponvel while committing dacoity.
A. 1 to
A.4
A.1 to A.4 found guilty.
A.1 to A.4 sentenced to undergo Rigorous Imprisonment for nine years for the conviction under Sec.397 IPC. For conviction under Sec.395 IPC, no separate sentence imposed.

18. Seriously attacking the prosecution case and raising several contentions of lapses in investigation, the learned counsel for the Accused interalia raised the following contentions:-

(i) Evidence of P.Ws.1 and 7 suffers from improvements and their identification of the Accused cannot be relied upon and their evidence is wanting on the light aspect in the scene of occurrence;
(ii) Lapses in investigation that there was no investigation of V.C.R.,

Gold jewels and on the death of Perumal - deceased Accused;
(iii)Inordinate delay in holding the Identification Parade; When A.2 and A.3 were apprehended even on the date of occurrence on 14.04 .1996, the delay in holding the Identification Parade on 10.06.1996 and 03.07.1996 seriously undermines the prosecution case;

(iv) A.2 to A.4 have clearly stated as to how they happened to be in Police custody and the same was not properly appreciated by the trial Court. Conviction is assailed on the ground that the dacoities are stated to be only four in number and hence, the ingredients of Sec.395 I.P. C. is not made out. Taking me through the evidence and Ex.P.1 - Complaint and relying upon number of decisions, learned counsel for Appellants / Accused 2 to 4 contended that there is no proper appreciation of evidence by the trial Court and that the conviction cannot be sustained.

19. Countering the arguments of the Appellants / Accused 2 to 4, the learned Government Advocate submitted that the overt act of the dacoities is well proved by the evidence of P.Ws.1 and 7, which is further strengthened by the earlier Identification Parade of the Accused. It is further submitted that the evidence of P.Ws.1 and 7 being victims of dacoity, is confirmed by the injuries sustained by them. Laying emphasis upon the fact that Accused and deceased Accused Perumal were caught red handed while they attempted to escape in the Maruti Van, much reliance is placed upon recovery of the Maruti Van and robbed articles from the Accused. The learned Government Advocate further submitted that the overwhelming evidence adduced by the prosecution is unassailable and that the finding of guilt and conviction is to be maintained.

20. Upon careful reassessment of the evidence and materials on record, Judgment of the trial Court and submissions of both sides, the following common points arise for consideration in these appeals:-

(i) Whether identification of the Accused and recovery of incriminating looted properties along with Maruti Van and the weapons used are proved by the prosecution ?

(ii) Whether the Accused are right in assailing the conviction on the basis of averments in Ex.P.1 that there were only four persons involved in the dacoity ?

(iii) Whether the proved circumstances establish the guilt of the Accused 1 to 4 and deceased Accused Perumal ?

(iv) Whether the conviction of the Appellants / Accused 2 to 4 under Sec.395 I.P.C. and various other offences warrants any interference ?

21. To prove the dacoity in Glendale Estate, Runnymade Division, prosecution relies upon the following direct and circumstantial evidence:-

(i) Direct evidence of P.Ws.1 and 7, who are injured and also victims of dacoity;

(ii) That A.1 to A.3 and deceased Perumal were caught red-handed; recovery of looted properties and Maruti Van bearing Registration No.TN 41-A-8668 (M.O.1) from the Accused;
(iii)Identification of A.2 to A.4 by P.Ws.1 and 7 in the Identification Parade held on 10.06.1996 and 03.07.1996.

22. On the night of 13/14.04.1996, P.W.1 - Ponvel was inside the Bungalow. P.W.7 (Ganesan) - Watchman was outside. P.W.6 (Sujatha Ponvel) - wife of P.W.1 and their Children had been to Madras. In the mid-night at about 1.30 a.m., A.1 to A.4 and deceased Accused Perumal, armed with weapons, gained entry into Runnymade Estate. Firstly, they tied the hands of P.W.7. When P.W.7 raised alarm calling Jiu. Jiu. P.W.1 switched on the lights and came out of the Bungalow. At that time, deceased Accused Perumal cut P.W.1 with Aruval. When P.W.1 prevented the same, he sustained incised wound on the right palm region. A.2 and A.3 beat P.W.1 with 'Kattai' on his head and shoulder. Pleading not to do anything, P.W.1 handed over Bureau Key to the Accused. When P.W.1 tried to escape through bathroom, A.4 - Manickam beat him with 'Kattai'. In the Bungalow, Bureau and suitcases were opened. A.1 was searching for jewels and money. Other Accused joined him and the whole Bungalow was looted. Accused have robbed cash of Rs.9 ,000/-, jewels, VCR and Philips Tape-recorder. Threatening P.W.1, A.1 to A.4 and deceased Perumal had taken away M.O.1 - Maruti Van and escaped. Narration of occurrence and about the looted articles, evidence of P.Ws.1 and 7 is spontaneous and cogent. Evidence of P. Ws.1 and 7 is to be tested for its corroboration about the factum of crime and identification of the Accused as dacoities.

23. Force and violence was used in the commission of dacoity. That blood was splattered all over the Bungalow is the tell-tale circumstance that violence was used. The Accused were armed with dangerous weapons and were reacting violently. When there was resistance from P.Ws.1 and 7, the Accused had voluntarily caused injuries to P.Ws.1 and 7. The blood stains found all over the Bungalow amply corroborates the version of P.Ws.1 and 7 on the factum of dacoity.

24. Factum of dacoity in the Runnymade Estate Bungalow is further corroborated by the objective finding during investigation. For committing dacoity and robbery of articles, force and violence was used, which is manifested by more than one aspect, which was noted during the objective findings. Blood was found splattered in the whole Bungalow. The whole bungalow was looted. Telephone line was disconnected. While searching for jewels, cash and other articles, Bureau and Suitcases were opened. That the whole Bungalow was looted is clearly seen from Ex.P.16 - Observation Mahazar. We may refer to the meddling noted during inspection ...

"... nlgps; kPJ Rtw;wpypUe;J vjphpfshy; vLf;fg;gl;l Rth; fofhuk; kw;Wk; rhkhd;fs; fiyf;fg;gl;l epiyapy; cs;sJ ... "

"... ku gPnuhtpy; ,Ue;j N:l;nf!;fs;. ku mykhhp jpwf;fg;gl;L fiye;J

fhzg;gLfpwJ/ ... "

This is further corroborated by M.O.39 series - Photographs.

25. That P.Ws.1 and 7 are victims of dacoity is corroborated by the medical evidence. The Accused caused injuries to P.W.1 - Ponvel when he tried to show protest. After the registration of First Information Report (Ex.P.27), P.W.1 was sent to Coonoor Government Hospital with Police Memo. P.W.8 - Dr.Ramachandran had examined P.W.1 at 2.30 a.m. on 14.04.1996 and found eight external injuries and issued Ex. P.13 - Accident Register. From Ex.P.13, it is seen that P.W.1 sustained ...

Incised Wounds } On the right thumb, in the web space between left thumb and left index finger, on the centre of scalp and between right ring and mid fingers.

Contusions } On back of head and on back of chest

Lacerated Wound } On the left Parietal region of scalp

Abrasion } On left ear.

26. Likewise, P.W.7 (Ganesan) - Watchman sustained incised wound on the centre of his scalp and abrasion on right index finger. Ex.P.14 is the Accident Register of P.W.7. While they were treated by the P.W.8 - Dr.Ramachandran, both P.Ws.1 and 7 have stated that they have sustained injuries due to assault with sticks and knives by four unknown persons at about 1.30 a.m. on 14.04.1996 at Assistant Manager's Bungalow.

27. Thus, hurt was caused to P.Ws.1 and 7 by the voluntary act of the Accused. From the evidence of P.Ws.1 and 7, it is clear that the Accused have wielded the weapon and caused injuries to P.Ws.1 and 7, when they tried to resist them. From Ex.P.16 - Observation Mahazar, it is seen that blood was splattered in Reception Room and other rooms of the Bungalow. We may usefully refer to those objective findings as to the presence of blood noted during inspection of the scene of occurrence, which is as under:-

" ... tuhe;jhtpypUe;J tuntw;g[miwf;F bry;Yk; fjtpd; ,lJ gf;fk; Rtw;wpy; ,uj;jf;fiw fhzg;gLfpwJ ... "

" ... tuntw;g[miwapy; Vuhskhd ,uj;jf; fiwfs; fhzg;gLfpwJ ..."

Thus, it is well proved that P.Ws.1 and 7 were victims of dacoity, who sustained bleeding injuries. Further it is also well proved that the miscreants have voluntarily caused injuries to P.Ws.1 and 7 when they tried to protest offering resistance.

28. Corroboration on the identification of the Accused. In cases of dacoity, identification of the Accused is of primary consideration. While in the witness box, P.Ws.1 and 7 have identified

the Accused 1 to 4 as the dacoities. P.Ws.1 and 7 have identified A.1 - Chelladurai as armed with Aruval; A.2 - Suresh and A.3 - Vijay armed with 'Kattai'. A.4 - Manickam was identified as the one armed with 'Kattai' and standing near the bathroom. Deceased Accused Perumal was identified as the one armed with Aruval. The main question for consideration is whether identification of the Accused 1 to 4 by P. Ws.1 and 7 is reliable and whether it can form the basis for conviction ?

29. The dacoities have gone through the whole Bungalow searching for jewels, cash and other articles. Since they have been searching the whole Bungalow, the occurrence must have persisted for some time. Lights were burning inside the Bungalow. P.Ws.1 and 7 had ample time to notice the features of the dacoities. Having noted their features, in Ex.P.1 - Complaint, P.W.1 - Ponvel had given the following details of identification of the dacoities:-

" ... v';fisj; jhf;fpa 4 ngh;fSf;F Rkhh; 18 tajpypUe;J 25 tajpw;F cl;gl;lth;fs;/ ehY ngUk; ngz;l; rh;l; nghl;L ,Ue;jhh;fs;/ jkpHpy; ngrpdhh;fs; ... ".

Whether the above particulars regarding age, way of dressing and the language, which the Accused spoke can be sufficient features of identification ?

30. Further question arises, judged on the facts and circumstances, whether on the evidence of P.Ws.1 and 7 identification of the Accused could be relied upon ? Identification of the Accused by P. Ws.1 and 7 is seriously assailed on the ground of paucity of light. The learned counsel for the Appellants / A.2 to A.4 submitted that there is no evidence as to the source of light in the Bungalow and in the absence of evidence on the light, it would be dangerous to base the conviction. It is further submitted that unless there is definite evidence on the source of light, no conviction could be based upon the evidence of P.Ws.1 and 7. On this point, reliance is placed upon 200 0 (2) Crimes 490 - Suresh & Others v. State of U.P. In the said case, before the Allahabad High Court, there was no evidence as to the arrangement of light. But, the instant case before us stands on different factual aspect. The light aspect in the instant case is made clear from the evidence on P.W.1 - Ponvel, where he has stated vdJ thl;r; nkd; Jiu. Jiu vd;W Tg;gpLk; rj;jk; nfl;L tpsf;Ffis nghl;L fjit jpwe;J Kd;gf;fk; te;njd; ... The occurrence was inside the Bungalow and the entire Bungalow was searched. Inside the Bungalow, there must have been sufficient illumination. Further, the Accused, who were on search for the articles, must have also put on the lights with the help of P.W.7 (Ganesan) - Watchman, whom they have taken along with them to search the Bungalow. Non-mention of light aspect in Ex.P.1 - Complaint would not in any way lead to the conclusion that there was no light at the time of occurrence.

31. Like any other case, in the instant case the Accused were not arrested at a later date. The Accused were caught red-handed whilst they escaped in M.O.1 - Maruti Van. A.1 - Chelladurai drove the Maruti Van. Other Accused were seated inside the Van. They did not stop the vehicle for the signal by P.W.17 - S.I. of Police, who was keeping watch for the Maruti Van

bearing Registration No.TN 41 A 8668 on information from Coimbatore Control Room. From the evidence of P.W.1 7 - S.I. of Police and Ex.P.29 - Special Report, it is made clear that the Maruti Van was chased to some distance and the same hit against Vadakovai Bridge and then only stopped. P.W.17 - S.I. of Police had spoken about the two Accused viz., A.4 - Manickam and deceased Perumal. Deceased accused Perumal escapped from that place. Rest of the Accused viz., A.1 to A.3 were arrested at 4.30 a.m. on the same day. When being interrogated, A.2 - Suresh had voluntarily given a confession statement. On the basis of his Confession Statement, looted properties and weapons - M.Os.8 to 29 and M.O.41 were seized from M. O.1 - Maruti Van. P.Ws.1 and 6 had identified those articles, recovered from the Maruti Van as the stolen articles. Arrest of the Accused immediately after the occurrence, recovery of looted articles and weapons along with the Maruti Van are the strong pieces of evidence against the Accused.

32. That Accused 1 to 3 were arrested on 14.04.1996 - 4.30 a.m. in the National Highways by P.W.17 - S.I. of Police is amply corroborated by the events that followed, which could be detailed as follows:-

(i) About the arrest of the Accused and seizure of the articles and sending the Accused to the hospital; P.W.17 - S.I. of Police submitted Ex.P.29 - Special Report to P.W.18 - Inspector of Police, Traffic Wing, Coimbatore. On the basis of Ex.P.29, a case was registered in Crime No.307 of 1996 under Ss.279, 337, 338 I.P.C. r/w Sec. 119, 177 Motor Vehicles Act and under Sec.17 4 Crl.P.C.

(ii) Injured Accused 1 to 3 were immediately sent to the hospital for treatment;
(iii)Recovery of blood stained clothes from the Accused.

33. We may further elaborate on the (ii) and (iii) aspects. During the chase and due to the hit against the Bridge, A.1 to A.3 sustained injuries. P.W.17 - S.I. of Police had taken A.1 to A.3 to Coimbatore Medical College Hospital. P.W.4 - Dr.Chidambara Jothi treated them. A.1 - Chellaudrai, who was on wheels, sustained fracture injuries on his right Femur. Following injuries were noted on the person of the Accused:-

Accused
Injuries
1st accused

Ex.P.7

Two abrasions on lateral right thigh - deformed.
Fracture shaft of right femur.
2nd Accused

Ex.P.8

Pain on right gluteal region

Left forehead swelling.
3rd accused

Ex.P.9
Lacerated injury on the right knee
and right leg medial

Before P.W.4 - Dr.Chidambarajothi, who treated them, A.1 to A.3 stated that they have sustained the injuries while travelling in Maruti Van TN 41 A 8668 and the Van hit against the Bridge. P.W.4 opined about the possibility of the above injuries being caused during the accident while the vehicle hit against the Bridge. The statement of the Accused 1 to 3 to P.W.4 - Dr.Chidambarajothi as to the manner of sustaining injuries and the very fact that the Accused sustained injuries while the Maruti Van hit against the Bridge are the strong militating circumstances against the Accused.

34. Arrest of the Accused 1 to 3 by P.W.17 - S.I. of Police is further strengthened by the recovery of blood stained clothes from A.1 to A.3. In the presence of P.W.12 - Anand, a Taxi Driver, the following blood stained apparels are recovered from the Accused and human blood was detected in them during chemical analysis as noted below:-

Accused
Articles recovered and Mahazar
Chemical analysis report - Ex.P.33.
A.1
M.O.34 - Tericotton shirt

Ex.P.24
Detection of human blood in M.O.34.
A.2
M.O.35 - Shoe and
M.O.36- Blue colour shirt

Ex.P.24.
Detection of human blood in M.O.35.
A.3
M.O.37 - Green colour shirt
M.O.38 - Rubber shoe

Ex.P.25
Detection of human blood in M.Os.37 and 38.

Evidence of P.W.12 - Anand and P.W.20 - I.O. as to the recovery of blood stained apparels is cogent and consistent. That human blood was detected in the blood stained articles recovered from the accused substantiates the injuries sustained by the Accused, which is evidence of strong character, strengthening the prosecution case.

35. The Accused 2 to 4 have denied arrest on the Highways by P.W.1

7 as alleged by the prosecution. According to A.2 and A.3, they were taken from under the Bridge and severely beaten by the Police and that a false case is foisted against them. According to A.4, he is employed in Aarthi Hotel in Triplicane, Madras from where he was taken to Coonoor and implicated in the false case. The defence set forth by the Accused is very vague. The question remains un-answered as to why should a false case be foisted against the Accused taking them from under the Bridge. If really the Accused were so taken from under the Bridge, there would not have been injuries on their person as noted above. The injuries found on the person of Accused, particularly fracture injury on A.1 and recovery of blood stained clothes from them clearly falsify the defence. Recovery of Blood stained apparels from the accused further falsifies the defence version.

36. In the rash attempt to escape from the Police, deceased accused Perumal while trying to escape, had fallen down from the Bridge. Only upon hearing murmur down below the Bridge in the morning at about 7.00 - 7.30 a.m. on 14.04.1996, P.W.17 - S.I. of Police noted the said Perumal, who sustained grievous injuries. He was immediately taken to Coimbatore Medical College Hospital. On examination, he was found to be dead.

37. Since accused Perumal died in Police Custody, P.W.18 - Investigating Officer, who registered a case in Crime No.307 of1996, requested Revenue Divisional Officer to conduct Inquest on the body of Perumal. Pursuant to the requisition from the Inspector of Police, inquest was held on the body of Perumal by RDO. P.W.5 - Dr. Shanmugavelusamy, attached to Coimbatore Medical College Hospital conducted Autopsy on the body of deceased accused Perumal and noted eleven injuries. He issued Ex.P.11 - Post-mortem Certificate. P.W.18 - Investigating Officer in Crime No.307 of 1996 had clearly spoken about the procedures adopted for inquest and for conducting

Autopsy on the body of deceased Perumal. The Accused could have no valid grievance on the procedures so adopted to conduct autopsy on the body of the accused Perumal.

38. At this juncture, we may refer to the flimsy attempt made by the defence suggesting that P.Ws.1 and 7 are responsible for the death of Perumal. According to Appellants / Accused 2 to 4, P.Ws.1 and 7 are inimical towards Perumal and only P.Ws.1 and 7 have thrown him down under the Bridge and hence, P.Ws.1 and 7 are responsible for the death of Perumal. In support of their defence version, the Accused point out lying of the body of Perumal on the Railway Track and that the Coonoor Police made no attempt to enquire the Railway Police about the same. The Accused have not come out with any definite suggestion. It was vaguely suggested to P.W.20 - I.O. and he replied that bgUkhis m/rh/1 kw;Wk; m/rh/7 jhd; J}f;fpg; nghl;L ,Uf;fntz;Lk; vd;W vjphpfs; re;njfg;gLfpwhh;fs; vd;why; jtW/ Even by plain reading of the above suggestion, the defence version could be rejected as flimsy and unsustainable. The nature of enmity between P.Ws.1 and 7 and deceased Perumal is not elaborated. If there was any such enmity, P.W.1 - Ponvel is the appropriate person who could answer about any such enmity. But very strangely, the above suggestion was not put to P.W.1. Having caught red-handed, it is only the last attempt of the Accused to set forth the flimsy

defence throwing out the responsibility on P.Ws.1 and 7 for the death of Perumal. This defence was rightly rejected by the trial Court.

39. Identification Parade. Identification of A.1 to A.4 in the Court by P.Ws.1 and 7 is strengthened by their earlier identification of the Accused in the Identification Parade. P.W.2 - Judicial Magistrate, Ooty held the Identification Parade in Coimbatore Central Prison on 10.06.1996 within the Jail Premises. P.W.1 - Ponvel has correctly identified A.2 and A.3 when they were mixed up with other nonsuspects. Even when their shirts were changed, P.W.1 has correctly identified A.2 and A.3. A.4 - Manickam was arrested on 09.06.1996. Regarding A.4 - Manickam, Identification Parade was held on 03.07.199 6 in Coonoor Sub Jail. On that date, P.Ws.1 and 7 have correctly identified A.4. In the Identification Parade held on 03.07.1996, P. W.7 - Ganesan had also identified A.2 and A.3 for whom separate Identification Parade was held. When the Identification Parade was completed on 03.07.1996, A.2 to A.4 told P.W.2 - Judicial Magistrate that they have already been watched over by P.W.7 - Ganesan, which was made known to them by another prisoner Sugumar. By so saying, the Accused have raised objections for their identification by P.W.7. The Accused, excepting A.3 did not give their objections in writing. P.W.2 - Judicial Magistrate enquired the said person Sugumar, who merely stated that he had only supplied tea to the Accused, who were in prison and stated nothing more. No weight could be attached to the vague and general statement of the Accused during the Test Identification Parade. On that basis, the identification of accused 2 to 4 during the parade cannot be doubted.

40. P.W.2 is the Judicial Officer, who conducted Identification Parade. P.W.2 issued summons to the witnesses to hold the Identification Parade on 10.06.1996 in Coimbatore Central Jail; on 03 .07.1996 in Coonoor Sub Jail. P.W.2 has chosen fourteen nonsuspects, who were similar in appearance and of the same age as that of the suspected accused. The suspected Accused and the non-suspects were placed in a row and the witnesses have correctly identified the suspects. Even when the row was changed with the change of dresses, P.W.1 - Ponvel correctly identified A.2 and A3.

41. Likewise, for the Identification Parade held on 03.07.1996, ten non-suspects were chosen. A.2 and A.3 were placed with them and P.W.7 - Ganesan had correctly identified them. Likewise for A.4 - Manickam also, eight non-suspects were chosen. A.4 was made to form the row along with eight non-suspects. P.Ws.1 and 7 have correctly identified A.4 - Manickam. This identification of the Accused in the earlier Identification Parade amply strengthens the identification of the Accused in the Court.

42. As discussed earlier, A.1 to A.4 were arrested immediately after the occurrence i.e., on 14.04.1996 - 4.30 a.m. Therefore, it is contended that when A.1 to A.3 were very well available with the Investigating Agency, non-conducting of the Test Identification Parade at the earlier opportunity raises serious doubts on the prosecution case. Submitting that there is no explanation for the delay in holding the Test Identification Parade, learned counsel for the Appellants relied upon 1997 III Crime A.P. 197 - A.Nageswara Rao & another v. State of A.P. and 1997 (3) Crimes 240 (SC) - Shabad Pulla Reddy & Ors. v. State of Andhra Pradesh. In the factual

circumstances of those cases, benefit of doubt was given to the Accused on the ground of delay in holding the Test Identification Parade.

43. The case in hand stands on different footing. For more than one reason Test Identification Parade could not immediately be held. Firstly, P.W.1 - Ponvel, the key witness for the occurrence sustained number of injuries including incised wound in the web space between left thumb and left index finger exposing the cut muscles. That apart, he sustained incised wound on the head and all over the body. Because of the injuries sustained, P.W.1 might not have been immediately in a position to go to Jail for participating in Test Identification Parade.

44. Nextly, while the other Accused were apprehended, A.4 - Manickam absconded. He was arrested only on 05.06.1996. The Investigating Officer was perhaps waiting to apprehend A.4 also. Secondly, it is to be pointed out that A.1 - Chelladurai himself had sustained fracture of right femur. Both witnesses and Accused sustained injuries. In those facts and circumstances, the Investigating Officer had every reason to wait for to make a requisition for holding of Test Identification Parade.

45. In this context, we may refer to a point regarding A.1 - Chellathurai. For identification of A.1, no Identification Parade was held at all. He sustained fracture injury in the Shaft of right Femur. The fracture injury was found to be grievous. There is no evidence as to the percentage of disability. Perhaps, A.1 was immobilized for being produced in the Identification Parade. In fact, after the occurrence A.1 was identified by P.Ws.1 and 7 only in the Court. Nonholding of Test Identification Parade regarding A.1 has no bearing on these appeals, since A.1 - Chelladurai is not the Appellant in these appeals.

46. Evidence of identification of A.2 to A.4 during the Identification Parade corroborates their identification by P.Ws.1 and 7 during the trial. The evidence of P.Ws.1 and 7 identifying A.1 to A.4 is strengthened by prior identification of the Accused in the Identification Parade.

47. The Accused escaped in M.O.1 - Maruti Van bearing Registration No.TN 41 A 8668. The seizure of M.O.1 is yet another piece of evidence against the Accused. P.Ws.1 and 7 have identified the vehicle - M.O.1. In cases of dacoity, recovery of stolen articles and the vehicle from the Accused persons has considerable importance.

48. Immediately after the occurrence, A.1 to A.3 were caught redhanded. Recovery of the stolen articles and the way in which the Accused tried to escape clearly bring home the complicity of the Accused in the crime. Since the Accused were found in possession of the articles immediately after the occurrence, strong presumption arises under Illustration (a) of Sec.114 of Indian Evidence Act. The trial Court has rightly based the conviction upon this strong evidence - recovery of looted articles from the Accused.

49. Evidentiary value to be attached to the recovery of the

stolen articles from the Accused is assailed on the ground that the recovery was only at the instance of A.2 - Suresh and other Accused cannot be found guilty on the basis of that recovery at the instance of A.2 - Suresh. This argument proceeds on the presumptive footing as if the recovery was exclusively from A.2. It is true that on the confession statement of A.2, recovery was made. But it is not as if the recovery was exclusively at the instance of A.2 alone. The act of the Accused escaping in a Maruti Van with

stolen articles was a conjoint act. Though the articles were recovered on the basis of confession statement of A.2, recovery cannot exclusively be attributed to A.2 alone.

50. Yet another contention is raised on the ground of non production of the damaged vehicle - M.O.1 Maruti Van. As discussed earlier, on the basis of Ex.P.29 - Special Report by P.W.17 - S.I. of Police, a case was registered in Crime No.307 of 1996, Traffic wing, Coimbatore for rash and negligent driving and causing injuries. By his Special Report - Ex.P.29, P.W.17 has clearly narrated about the interception and chasing of the Maruti Van. He has also stated about the hitting of the Van against the Bridge and its damage. In Ex.P.29 - Special Report, P.W.17 has reiterated about the hitting of the vehicle against the Bridge and damages caused as ...

" me;j bts;is khUjp ntd; o/vd;/41 V 8668 tlnfhit nkk;ghyk; nkny te;jnghJ ghyj;jpd; jLg;g[r; Rth; kPJ nkhjp tpgj;Jf;Fs;shfp nrjk; Mfp epd;wJ/ /// tpgj;Jf;Fs;shd thfdk; rk;gt ,lj;jpnyna tlnfhit nkk; ghyj; jpy; cs;sJ. ...
"

The above statement of P.W.17 in Ex.P.29 sufficiently brings out the damage caused to the Maruti Van. That Maruti Van is a material object involved in Crime No.307 of 1996. Hence, Motor Vehicle Inspector' s Report of Maruti Van has no relevance to the case in hand. If really it was required for any purpose of the defence, it is for the defence to have taken steps to call for the same. The prosecution is not obliged to anticipate all possible defence and produce documents to counter the same. The point urged on non-production of Motor Vehicle Inspector's Report of Maruti Van has no force.

51. In Ex.P.1 - Complaint, the number of miscreants are stated to be four in number - thl;r;nkd; fnzrDf;F gpd;g[wk; ehd;F ngh;fs; ifapy; fl;ila[lDk; ePz;l fj;jpa[lDk; epd;W bfhz;L ,Ue;jth;fs; jpObud vd; id bgl;U:k; tiu js;spf; bfhz;L ngha; fl;ilahy; moj;Jk; fj;jpahy; btl; odhh;fs;/ ehd; jLj;j nghJ vdJ ,uz;L iffspYk; ,uj;jf; fhak; Vw;gl;Lk; uj;jk; bfhl;oaJ/....". Before P.W.8 - Dr.Ramachandran also while narrating the manner of occurrence, it was stated as ...

" Alleged to have been assaulted with sticks and knives by four unknown persons at about 1.30 a.m. on 14.04.1996 at Asst. Managers' Bungalow. ..." (Vide Ex.P.14)

52. Placing reliance upon the above, it is submitted that when the miscreants are stated to be four in number in the earlier version in

Ex.P.1 - Complaint and in Ex.P.14 - Accident Register relating to P.W.7 - Ganesan, the conviction under Sec.395 I.P.C. cannot be sustained. Conviction is assailed on the ground that when the essential ingredients of Sec.395 I.P.C. is five persons, the conviction of four persons for the offence under Sec.395 I.P.C. cannot be sustained. For appreciating this point, we may recapitulate the evidence of P.W.1 and P.W.7 as to the occurrence. After binding over P.W.7 - Ganesan, A.1 to A.3 and deceased Perumal went inside the Bungalow when P.W.1 - Ponvel opened the Door. A.4 - Manickam stood by the bathroom side. In Ex.P.34 - Rough Plan, the places where the Accused positioned themselves are not indicated. Quite probably, A.4 took position near the bathroom, which is shown to be on the Northern side adjacent to the Reception Room, where P.W.1 - Ponvel was attacked. Thus in all probabilities, P.W.1 might have initially seen four persons. He might have omitted to mention the other accused, who positioned himself near the bathroom. Mention of number of miscreants as 'four' in Ex.P.1 does not in any way undermine Ex.P.1 - Complaint. This is all the more so when A.1 to A.5 were intercepted and apprehended in their bid to escape in Maruti Van.

53. Participation of five persons in the occurrence is well brought out by the evidence of P.Ws.1, 7 and 17. The Accused were armed with weapons. Their conjoint act of dacoity is clerly established by the facts, evidence and circumstances. A.1 - Chelladurai and deceased accused Perumal

were armed with Aruvals. The Appellants / A.2 to A.4 were armed with 'Kattai'. While committing the dacoity, the Appellants are proved to have caused grievous injuries to P.W.1 - Ponvel.

54. For conviction under Sec.397 I.P.C., the following essential ingredients are to be established:-

(i) the commission of robbery or dacoity;

(ii) that the accused used a deadly weapon; or caused grievous hurt; or attempted to cause death or grievous hurt;

(iii)that the above acts were done during the commission of robbery or dacoity.

55. By ample evidence and circumstances, prosecution has proved that the Accused entered into Runnymade Estate and tied P.W.7 - Ganesan and then entered into the Bunglow and looted away the ornaments and other articles. They being armed with Aruvals and Kattai, caused grievous injuries and simple injuries to P.Ws.1 and 7 respectively. For conviction under Sec.397 I.P.C., the maximum term of imprisonment that can be passed cannot exceed ten years; the minimum is seven years. The Appellants / A.2 to A.4 and A.1 are found guilty under Sec.39 7 r/w 395 I.P.C. (in charge No.5); for the conviction under Sec.397 r/ w 395 I.P.C., the Appellants / A.2 to A.4 and A.1 are sentenced to undergo Rigorous Imprisonment of nine years. The sentence of imprisonment imposed on the Appellants is well in conformity with the essentials of Sec.397 I.P.C.

56. A dacoit is actuated by the contemptible motive of appropriating property lawfully belonging to another. The crime itself is difficult to trace, and only a small proportion of the criminals taking part are arrest; even then it is often difficult to secure the conviction of more than a fraction of them. For these reasons it is a grievous mistake to treat dacoits lightly in the matter of punishment. In this case, there are no mitigating circumstances warranting reduction of the sentence. The trial Court has properly appreciated the overwhelming evidence and circumstances against the Accused. The reasonings for conviction of the Appellants / A.2 to A.4 are well balanced and are in conformity with the evidence on record. The finding of guilt and conviction and sentence of imprisonment are to be sustained and these appeals are bound to fail.

57. Crl.A.Nos.18 and 350 of 1998. For the reasons stated above, the Judgment of the trial Court in S.C.No.10 of 1997 (dated 01.10.1997) convicting Appellants / A.2 to A.4 for various offences and the sentence of imprisonment imposed on them are confirmed and both the appeals are dismissed. The Trial Court is directed to take immediate steps for securing the Accused to commit them to prison for serving the remaining period of sentence.

sbi

To

1. The Assistant Sessions Judge,
Udhagamandalam.

2. The Sessions Judge,
Nilgris District, Udhagamandalam.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Inspector of Police,
Coonoor Town Police Station,
Nilgris District.

5. The Public Prosecutor,
High Court, Madras.

□